

SPELLMAN HIGH VOLTAGE ELECTRONICS, Ltd. ("Spellman")

Terms & Conditions of Sale

1. Definitions:

"Agreement" means the agreement for the sale and purchase of the Products between Spellman and the Buyer.

"Buyer" means the person or company purchasing Spellman's Products.

"Consumer" shall have the meaning ascribed in section 12 of the Unfair Contract Terms 1977.

"Products" means Spellman's goods and/or services referred to in the Purchase Order.

"Purchase Order" means Buyer's Product requirements specified in Buyer's order, whether made orally, by electronic means, or by written purchase order.

2. Confirmation and Acceptance:

These Terms and Conditions of Sale shall be deemed an integral part of the Purchase Order and, unless there is a separate written Agreement between Buyer and Spellman with respect to the transaction set forth in the Purchase Order, these Terms and Conditions and the Purchase Order constitute the Agreement. Each order or acceptance of a quotation for Products by the Buyer from Spellman shall be deemed to be an offer by the Buyer to buy Products subject to these Terms and Conditions. No order placed by the Buyer shall be deemed to be accepted by Spellman until a written acknowledgement of order is issued by Spellman or (if earlier) Spellman delivers the Products to the Buyer. These Terms and Conditions shall be deemed accepted by Buyer and Spellman upon acknowledgement thereof or commencement of performance. No modification or waiver of these Terms and Conditions shall be effective unless set forth in a writing signed by Buyer and Spellman. No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the agreement between the Buyer and Spellman. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given on behalf of Spellman which is not set out in the Agreement.

3. Delivery:

All prices and risk of loss are Ex-Works Spellman's factory, Pulborough, United Kingdom. Unless instructed otherwise by the Buyer, Spellman will arrange shipping of the Products on the Buyer's behalf at the Buyer's risk and cost. Unless otherwise agreed, Products shall be delivered in Spellman's standard packaging. Agreed delivery dates, subject to applicable manufacturing lead times, shall be adhered to in good faith by Spellman, but time shall not be deemed of the essence. On written notice to Spellman the Buyer may reschedule quantities of Products for delivery subject to Buyer's agreement to compensate Spellman for its reasonable costs incurred as a result of the rescheduling. If for any reason the Buyer fails to accept delivery of any of the Products when they are ready for delivery, or Spellman is unable to deliver the Products on time because the Buyer has not provided appropriate instructions, documents, licenses or authorisations, a) risk in the Products shall pass to the Buyer (including for loss or damage caused by Spellman's negligence), b) the Products shall be deemed to have been delivered; and c) Spellman may store the Products until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance). Spellman may deliver the Products in installments. Each separate installment shall be invoiced and paid for in accordance with the provisions of the Product Order. Each installment shall be a separate order and no cancellation or termination of any one order relating to an installment shall entitle the Buyer to repudiate or cancel any other contract or installment. Cancellation of any order is subject to Buyer's agreement to compensate Spellman for (a) payments required to be made by Spellman to its suppliers as a result of such cancellation, (b) the selling price of finished goods, and (c) 120% of the cost of inventories allocated to the order. Costs incurred by Spellman

after the effective date of Buyer's cancellation shall be the sole responsibility of Spellman. Ownership of the Products shall not pass to the Buyer until Spellman has received in full (in cash or cleared funds) all sums due to it in respect of the Products and all other sums which become due to Spellman from the Buyer on any account. The Buyer grants Spellman a first security interest in the Products and their proceeds until payment in full in accordance with these Terms and Conditions. Spellman shall be entitled to recover payment for the products notwithstanding that ownership of the Products has not passed to the Buyer. The Buyer's right to possession of the Products shall terminate immediately if a) the Buyer suffers an event of insolvency, liquidation, winding up, receivership, administration, creditors or members arrangement or bankruptcy (except a solvent voluntary liquidation for the purpose only of restructuring or amalgamation); or b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the agreement or any other contract between Spellman and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade. The Buyer grants Spellman, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them. On termination of the agreement, howsoever caused, Spellman's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

4. Delays:

Neither Buyer nor Spellman shall be liable for failure to perform or deliver by reason of causes beyond its reasonable control (including without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials) and without its fault or negligence.

5. Prices and Payment:

Quoted prices are valid for 30 days from the date of quotation, or, if there is no written quotation, prices are those in effect at the time of acceptance of the order for the Products. Published prices are subject to change without notice. When the price has been discounted in consideration of Buyer's forecasted purchase of a minimum quantity of Products, and Buyer purchases less than the minimum quantity required to qualify for that discounted price, the price shall be retroactively increased to the price quoted for the quantity actually purchased. Spellman reserves the right to increase prices after the date of the Buyer's Purchase Order to cover currency fluctuation which directly increases costs of imported material. Unless otherwise agreed in writing between Buyer and Seller, and subject to Spellman's approval of Buyer's credit, payment terms are net 30 days from shipment. Time for payment shall be of the essence. No payment shall be deemed to have been received until Spellman has received cleared funds. Spellman reserves the right to charge interest on overdue debts calculated at 4% per month above the prevailing Base Rate of HSBC Bank plc. Prices exclude shipping, carriage, insurance, duties, Value Added Tax (VAT) and other taxes, which shall be listed separately on Spellman's invoices at the prevailing rate and shall be paid by Buyer. All payments payable to Spellman under the Agreement shall become due immediately on termination of the Agreement despite any other provision.

6. Warranty:

Spellman warrants that all Products it manufactures will be free from defects in materials and factory workmanship, and agrees to repair or replace, without charge, any power supply that under normal use, operating conditions and maintenance reveals during the warranty period a

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defect in materials or factory workmanship. The warranty period is twelve (12) months from the date of shipment of the power supply. With respect to standard SL power supplies (not customized and assigned a separate X number) the warranty period is thirty-six (36) months from the date of shipment of the power supply.

This warranty does not apply to any Product that has been:

- Disassembled, altered, tampered, repaired or worked on by persons unauthorized by Spellman
- subjected to misuse, negligent handling, or accident not caused by the Product
- installed, connected, adjusted, or used other than in accordance with the original intended application and/or instructions furnished by Spellman.

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. The Buyer's sole remedy for a claimed breach of this warranty, and Spellman's sole liability is limited, at Spellman's discretion, to a refund of the purchase price or the repair or replacement of the power supply at Spellman's cost. The Buyer will be responsible for shipping charges to and from Spellman's plant. The Buyer will not be entitled to make claim for, or recover, any anticipatory profits, or incidental, special or consequential damages resulting from, or in any way relating to, an alleged breach of this warranty. Spellman shall not be liable for a breach of the warranty unless a) the Buyer gives written notice of the defect to Spellman and b) Spellman is given a reasonable opportunity after receiving the notice of examining such Products. In order to return the Products, the Buyer shall contact Spellman to obtain a return material authorization code number ("RMA number") and this should be marked clearly on the outside of the shipping container. Failure to obtain an RMA number may result in delay in returning the Products. Spellman will warrant for 3 months or for the balance of the products warranty (whichever is longer) the repaired assembly, part or unit. If the same problem shall occur within the warranty period, Spellman shall undertake to rectify the problem at Spellman's cost. No modification, amendment, supplement, addition, or other variation of this warranty will be binding unless it is set forth in a written instrument signed by an authorized officer of Spellman. See Spellman document 40218 latest issue for further details regarding the returns procedure.

7. Limitation of Liability

Nothing in these conditions excludes or limits Spellman's liability for a) death or personal injury caused by Spellman's negligence or b) under section 2(3) Consumer Protection Act 1987; or c) for any matter which is would be illegal for Spellman to exclude or attempt to exclude its liability; or d) for fraud or fraudulent misrepresentation. Spellman's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance of the Agreement shall be limited to the price quoted in the Purchase Order and Spellman shall not be liable to the Buyer for loss of profit, loss of business or depletion of goodwill in each case whether direct, indirect or consequential which arise out of or in connection with the Agreement.

8. Confidentiality:

(a) Scope. All data, drawings, materials, prototypes, designs, processes, procedures, formulae, improvements, financial data, marketing information, scientific data, technical information, engineering data, manufacturing specifications, know-how, and other trade secrets or confidential information which has been treated by Spellman or Buyer, or both, as confidential relating exclusively to the Products ("Confidential Data"), shall not be disclosed to any third party () without the express written consent of an officer of the party supplying such information; and

all information disclosed to either party and all other information to which either party may have access by virtue of such disclosure shall be presumed by the parties to be Confidential Data, unless the party disclosing such information shall advise the recipient thereof that any item(s) thereof need not be regarded or treated as confidential. The obligation to maintain the confidentiality of any Confidential Data shall endure permanently. The parties shall return any Confidential Data, and all copies thereof, to the disclosing party within 7 days after any request that any such information be returned.

(b) Exclusions. Confidential Data shall not include (i) information which is in possession of the recipient at the time it is received from the disclosing party, where possession of such information can be established from documentation generated prior to the disclosure of such information, or (ii) information in the public domain through no act or omission of either party, or (iii) information lawfully received from others who are not in breach of any confidentiality agreement with either of the parties, or (iv) information independently developed by the recipient, or (v) information which is required to be disclosed to a court of competent jurisdiction or to a governmental agency, provided the party subject to such disclosure order gives the other party prompt written notice of same and cooperates with the other party's efforts, if any, to obtain a protective order.

(c) Remedies. Buyer and Spellman acknowledge that the use or disclosure of any Confidential Data without the prior written consent of an officer of the disclosing party shall be a breach of this section and an unauthorized disclosure of trade secrets, and the party in breach shall be liable to the other party for compensation of all damages (other than consequential damages) arising out of or resulting from such breach, including attorneys' fees and court costs, if any; and it is acknowledged that the non-breaching party may suffer irreparable harm as a result of the breach and that equitable relief, such as an injunction, will be appropriate in such case for any breach or threatened breach.

(d) License. Spellman grants Buyer a paid-up, non-exclusive, worldwide right and license to use Spellman's Confidential Data solely for the purpose of marketing the Products. Spellman retains its right to utilize its Confidential Data to manufacture and market products other than the Products.

9. Mutual Indemnities:

Each party ("Indemnitor") agrees to defend any claim, suit, action or proceeding ("Claim") threatened or brought against the other party or the other party's parent, subsidiaries, affiliates, shareholders, directors, officers, employees, agents, distributors, suppliers or customers ("Indemnitees") insofar as any such Claim is based on a claim that any Product, or any component thereof, manufactured or distributed in accordance with the Indemnitor's design or specifications constitutes infringement of any patent, copyright, trademark, trade secret, or other property right, and the Indemnitor shall indemnify the Indemnitees for all royalties, damages, judgments, losses, liabilities, costs and expenses (including attorneys' fees) finally awarded against or incurred by any Indemnitee. Spellman shall have no liability under this section to the extent that the Claim is based upon (i) the use of the Product in combination with products or devices not furnished by Spellman or (ii) the Product as altered or modified by someone other than Spellman without the prior written consent of Spellman.

10. Miscellaneous:

(a) Spellman Product(s) do not fall into any of the product categories specified in the RoHS and WEEE Directives. Consequently Spellman does not have a legal responsibility to comply with Directive 2002/95/EC. For Products that have been built into end equipment, it is of the responsibility of the Buyer to ask for compliance to the RoHS Directive.

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Spellman recognizes it has an environmental responsibility and will ensure, where feasible, that all Products that we are responsible for as a manufacturer or distributor will comply with the essential elements of the RoHS Directive. The financing of the safe and responsible disposal of any Spellman Product that have been built into end equipment rests solely with the Buyer (i.e. the person discarding the equipment). Spellman Product(s) do not fall into any of the product categories specified in the WEEE Directive. Consequently Spellman has no direct responsibility with regards setting collection and recovery targets or offering a take back service. Spellman recognizes it has an environmental responsibility and will support treatment facilities by providing information as to the presence or otherwise of the materials and substances referenced in Annex II of the WEEE Directive.

(b) The terms and provisions hereof shall bind and benefit the successors and assigns of Spellman and Buyer.

(c) Neither party shall be or hold itself out to be a partner or joint venture with the other party as a result of the transaction referred to herein, and no third party is intended to or shall have any rights hereunder.

(d) These Terms and Conditions of Sale may not be modified, amended, or supplemented, nor may any provision hereof be waived, except if agreed in writing and signed by Spellman.

(e) The failure of either party at any time to require performance by the other party of its obligations hereunder shall not affect the right to require such performance at any time thereafter; and the waiver by either party of any remedy with respect to a breach of any provision hereof shall not constitute a waiver of a remedy with respect to any succeeding breach or any breach of any other provision.

(f) If any provision hereof is held invalid or unenforceable, such impediment shall attach only to such provision and shall not render invalid or unenforceable any other provision hereunder.

(g) All communications between the parties about the agreement shall be in writing and delivered by hand or sent by pre-paid first class post or fax to the parties' registered address. Communications shall be deemed to have been received a) if sent by pre-paid first class post, two working days after posting, b) if delivered by hand, on the day of delivery, or c) if sent by fax on a working day prior to 4pm, at the time of transmission and otherwise on the next working day.

(h) Subject to condition 10(b) the parties to the Agreement do not intend that any term of the agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it

(i) This Agreement, and the documents referred to in it, constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this agreement.

(j) Nothing in this Agreement shall limit or restrict a Consumer's statutory rights.

(k) These Terms and Conditions of Sale and their validity, construction and performance shall be governed in all respects by English law and the Buyer hereby irrevocably submits to the jurisdiction of the English Courts.